

37 Am. Jur. 2d Fraud and Deceit § 48

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Fraud and Deceit

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III. Means of Perpetration

B. False Pretenses and Fraudulent Devices, Schemes, and Tricks

§ 48. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) 27, 28

A.L.R. Library

[Enforceability of transaction entered into pursuant to referral sales arrangement](#), 14 A.L.R.3d 1420

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 58](#) (Complaint in federal court—Diversity of citizenship—Fraudulent representations and concealment in furtherance of “vanity publishing” scheme—Against publisher)

A fraud may be perpetrated by false pretenses or by any trick or device calculated to injure another,¹ or by artifice,² or scheme calculated to injure another.³ The common characteristic of cases involving fraudulent devices or false pretenses is the deprivation of another of a right, money, or property by artful and deceptive words and acts which, when the facts are known, were more or less obviously said or done with intent to defraud.⁴ In several instances, “referral sales” arrangements—a device by which purchases are induced on the representation that the cost to the buyer will be reduced by commissions the buyer will earn by referring the seller to other prospects for similar sales—have been deemed fraudulent.⁵

Although from a standpoint of civil responsibility, false pretenses may be made in numerous miscellaneous ways in diverse transactions,⁶ the most frequent occurrences of such wrongful conduct are the purchase or acquisition of goods with the preconceived intent not to pay for them,⁷ and the making of a promise with the intent at the time it is made, not to perform it.⁸

A person who has been induced by artifice to do that which the law would otherwise have compelled him or her to do cannot claim to have been defrauded.⁹

Observation:

A fraudulent scheme to obtain money cannot be deemed consummated before the perpetrators have obtained the fruits of their illegal acts.¹⁰

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Footnotes

¹ [Downey v. Finucane](#), 205 N.Y. 251, 98 N.E. 391 (1912).

² [In re Felber's Estate](#), 193 Or. 231, 238 P.2d 203, 31 A.L.R.2d 231 (1951).

³ [U.S. v. Norton](#), 108 F.3d 133 (7th Cir. 1997).

As to conspiracy to defraud, see [Am. Jur. 2d, Conspiracy](#) § 63.

⁴ [Cerny v. Paxton & Gallagher Co.](#), 78 Neb. 134, 110 N.W. 882 (1907).

⁵ [Matthews v. Aluminum Acceptance Corp.](#), 1 Mich. App. 570, 137 N.W.2d 280 (1965); [Schow v. Guardtone, Inc.](#), 18 Utah 2d 135, 417 P.2d 643 (1966).

⁶ [§ 49](#).

⁷ [§§ 55 to 58](#).

⁸ [§§ 94 to 100](#).

⁹ [§ 274](#).

¹⁰ [GLM Corp. v. Klein](#), 684 F. Supp. 1242 (S.D. N.Y. 1988).